

**Notice of Allowability**

Application No.

10/728,066

Applicant(s)

PERRY ET AL.

Examiner

Art Unit

JAVIER G. BLANCO

3774

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--**

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to the amendment filed on January 18, 2008.
2. ☒ The allowed claim(s) is/are 1-30.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some\* c) ☐ None of the:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).
- \* Certified copies not received: \_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
- (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
- 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_.
- (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).**
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

**Attachment(s)**

- |  |   |
|--|---|
| 1. <input type="checkbox"/> Notice of References Cited (PTO-892)   | 5. <input type="checkbox"/> Notice of Informal Patent Application   |
| 2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 6. <input checked="" type="checkbox"/> Interview Summary (PTO-413),<br>Paper No./Mail Date <u>3/19/2008</u> . |
| 3. <input type="checkbox"/> Information Disclosure Statements (PTO/SB/08),<br>Paper No./Mail Date ____     | 7. <input checked="" type="checkbox"/> Examiner's Amendment/Comment   |
| 4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit<br>of Biological Material | 8. <input type="checkbox"/> Examiner's Statement of Reasons for Allowance                                     |
|  | 9. <input type="checkbox"/> Other ____.   |

/Javier G. Blanco/  
Examiner, Art Unit 3774

## **DETAILED ACTION**

### ***Response to Amendment***

1. Applicants' amendment of claims 1, 20, 22, and 29 in the reply filed on January 18, 2008 is acknowledged.

### **Examiner's Amendment**

2. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Attorney John Buchaca on Wednesday March 19, 2008.

The application has been amended as follows:

**Claim 1** (Currently Amended) An orbital implant having anterior and posterior sections which comprises:

a porous core;

an anterior, anchoring first non-liquid external and exposed surface-smoothing and irritation-reducing coating portion covering a first anterior outer surface section of said core;

said first coating portion having a first bioabsorbability rate; and

a separate posterior second non-liquid external and exposed surface-smoothing and irritation-reducing coating portion, spherically adjacent to said first portion, covering a second

Art Unit: 3738

posterior outer surface section of said core; said second coating portion having a second bioabsorbability rate faster than said first bioabsorbability rate, and wherein said first coating portion is not superimposed over said second coating portion.

**Claim 20** (Currently Amended) An artificial eye which comprises:

an orbital implant having a first surface divided into anterior and posterior sections;

a coating at least partially covering said first surface of the orbital implant;

said coating having an anterior, anchoring first non-liquid exposed surface-smoothing and irritation-reducing portion having a first bioabsorbability rate and a separate posterior second non-liquid exposed surface-smoothing and irritation-reducing portion, spherically adjacent to said first portion, having a second bioabsorbability rate faster than said first bioabsorbability rate; wherein said first coating portion is on the anterior section of the orbital implant, said second coating portion is on the posterior section of the orbital implant, and wherein said first coating portion is not superimposed over said second coating portion.

**Claim 22** (Currently Amended) An orbital implant having anterior and posterior sections comprising:

a substantially spheroid body sized and shaped to be placed in the orbit;

a coating ~~sized and shaped to intimately contact~~ covering a section of said body; ~~and~~

wherein said coating has an anterior, anchoring first non-liquid exposed surface-smoothing and irritation-reducing portion having a first bioabsorbability rate and a separate posterior second non-liquid exposed surface-smoothing and irritation-reducing portion,

Art Unit: 3738

spherically adjacent to said first portion, having a second bioabsorbability rate faster than said first bioabsorbability rate; and

wherein said first coating portion is on the anterior section of the orbital implant, said second coating portion is on the posterior section of the orbital implant, and wherein said first coating portion is not superimposed over said second coating portion.

**Claim 29** (Currently Amended) A combination of ~~a body~~ an orbital implant and a coating for implantation into the orbit of a mammal;

said ~~body~~ orbital implant comprises an arcuate outer surface, having anterior and posterior sections;

said coating comprises:

a first external and exposed anterior anchoring, surface-smoothing and irritation-reducing portion being made from a first material comprising a first polymer having a first bioabsorbability property;

said first coating portion ~~being sized and shaped to intimately contact~~ covering the anterior section of said outer surface;

a second external and exposed surface-smoothing and irritation-reducing portion, separate and spherically adjacent to said first portion, being made from a second material comprising a second polymer having a second bioabsorbability property;

said second coating portion ~~being sized and shaped to intimately contact~~ covering the posterior section of said outer surface;

wherein said first bioabsorbability property is slower than said second bioabsorbability property,  
and wherein said first coating portion is not superimposed over said second coating portion.

Claims 1-10 and 12-30 are allowable. Claim 11, previously withdrawn from consideration as a result of a restriction requirement, requires all the limitations of an allowable claim. Pursuant to the procedures set forth in MPEP § 821.04(a), the restriction requirement among/between **Implant**: Species A: Figure 1, Species B: Figure 5, Species C: Figure 6; **Die Press**: Species A: Figure 7, Species B: Figure 8; **Indicia**: Species A: Lettering, Species B: Color coding, as set forth in the Office action mailed on May 26, 2005, is hereby withdrawn and claim 11 is hereby rejoined and fully examined for patentability under 37 CFR 1.104. In view of the withdrawal of the restriction requirement, applicant(s) are advised that if any claim presented in a continuation or divisional application is anticipated by, or includes all the limitations of, a claim that is allowable in the present application, such claim may be subject to provisional statutory and/or nonstatutory double patenting rejections over the claims of the instant application. Once the restriction requirement is withdrawn, the provisions of 35 U.S.C. 121 are no longer applicable. See *In re Ziegler*, 443 F.2d 1211, 1215, 170 USPQ 129, 131-32 (CCPA 1971). See also MPEP § 804.01.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Javier G. Blanco whose telephone number is 571-272-4747. The examiner can normally be reached on M-F (9:00 a.m.-7:00 p.m.), first Friday of the bi-week off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine McDermott can be reached on (571) 272-4754. The fax phone numbers for the organization where this application or proceeding is assigned is 571-273-8300 for regular communications and After Final communications. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0858.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Javier G. Blanco/

Examiner, Art Unit 3774

/Dave Willse/

Primary Examiner, Art Unit 3738